

REMARKS

Reconsideration of the present application is respectfully requested. Claims 1-20 are pending in the application. The office action indicates in paragraph 5 on page 3 of the office action that Claims 1-7, 8-17, and 19-20 stand rejected as being anticipated by U.S. Patent No. 4,314,094 issued to Smith. It is believed, however, that claim 8 has been included in this rejection simply as a typographical error, considering that it is not addressed in the examiner's analysis beneath the opening sentence. Additionally, claim 8 is addressed (along with claim 18) in the next rejection, which is that claims 8 and 18 are unpatentable as being obvious in view of Smith. A new claim 21 has been added.

We believe the examiner's rejections should be withdrawn, because the presently claimed invention is not taught or even suggested by Smith. Smith does not solve the primary problem overcome by the present invention. This is because, like the other types of conventional devices discussed in the Background section of the application, its screw-in helical design makes it easily reusable by a technician in the field.

The removability of plugs in conventional buried splice enclosures creates major problems for telecommunications companies. Buried splice enclosures are not intended for reuse. Technicians in the field oftentimes attempt to make a quick fix of a faulty cable splice by simply removing the plug, reconnecting the wires, and then reinserting the same plug into the same enclosure rather than make a replacement of the splice using a new enclosure with fresh sealant. These activities are usually against company policy, but employees do it anyway as a shortcut. This may save the technician time, since he or she does not have to resplice the cable. The reused enclosure, however, will never be as protective as would a new enclosure with fresh sealant. This will result in the company having to make repeat calls to fix failed splices that are due to such "quick fix" repairs in which the technicians simply reuse the old device intended for

replacement. Buried splice enclosures are very inexpensive to replace. The cost of a repeated calls to fix failed splices, however, is much more expensive.

The Smith design is an example of these easily-defeated prior art enclosures. The device does have pins 60 and 62 received by grooves 64 and 66 which secure the Smith sleeve to its plug. This system is easily-defeated by a technician in the field, however, who may simply remove the pins. The easily reused splice enclosure of Smith does not anticipate the claimed invention.

The claims are drawn to an enclosure having a cap that is nearly impossible to remove. The claimed locking mechanism prevents withdrawal of the member from the container. In order to defeat the claimed system, the technician would have to cut the enclosure open, making it unusable. The claimed locking system comprises an annular protrusion having an offset-tooth like cross section. It works like a ratchet tooth, in a sense. The protrusion has a gradually-sloped face on a first side which slides in first. The second side of the protrusion, which trails on insertion, has a barrier face which drops off dramatically. The protrusion is received in a reciprocating channel. The channel has a channel has a gradually sloped surface which engages said gradually sloped face when said member is received into the enclosure. The channel also has a steep surface which engages the protrusion's barrier face. The engagement of the steep surface of the channel with the barrier face of the protrusion prevents the user from removing the plug from the enclosure – permanently.

Upon review, the examiner will recognize that all of the present claims include limitations designed to highlight patentable differences between the present invention and Smith.

In the office action, the examiner asserts that the threaded surfaces of the Smith enclosure (i.e., threaded surface 56) have gradually sloped surfaces which meet the claimed

gradually sloped surface of the locking mechanism of the present invention. The examiner, however, earlier in the office action designates the pins (60 and 62) and receiving grooves (64 and 66) in Smith as the locking mechanism. The pins and grooves in Smith do not have the claimed gradually sloped surface. And the examiner is not allowed to borrow the supposed gradually inclined surfaces of the threads to piece together a rejection when the claims clearly require the sloped surfaces to be on the locking mechanism. Therefore, the examiner has failed to meet his burden in this respect.

The examiner, in the Office Action, recites the *Span-Deck* case as providing support for the prospect that he does not have to show the steep rise or barrier face of the present invention. This application of *Span-Deck* is too far reaching. The examiner has not suggested any objective evidence in support of his position that the steep rise/barrier face arrangement of the present invention is an “extended application of obvious attributes” from Smith, as asserted.

An examiner is required to provide objective evidence in support of an obviousness finding. It is fundamental to a finding of obviousness, that the rejection be based on evidence in the record. *In re Grasselli*, 713 F.2d 731, 739, 218 USPQ 769, 775 (Fed. Cir. 1983). To support such a rejection, the examiner must reveal evidence in the references showing the teaching relied on. *See, e.g., McGinley v. Franklin Sports, Inc.*, 262 F.3d 1339, 1351-52, 60 USPQ2d 1001, 1008 (Fed. Cir. 2001). This factual inquiry must be thorough. *Id.* Additionally, it must be based on objective evidence in the record, not unsupported statements or conclusions. *See Brown & Williamson Tobacco Corp. v. Philip Morris Inc.*, 229 F.3d 1120, 1124-25, 56 USPQ2d 1456, 1459 (Fed. Cir. 2000); *C.R. Bard, Inc., v. M3 Systems, Inc.*, 157 F.3d 1340, 1352, 48 USPQ2d 1225, 1232 (Fed. Cir. 1998); *In re Dembiczak*, 175 F.3d 994, 999, 50 USPQ2d 1614, 1617 (Fed. Cir. 1999); and *In re Dance*, 160 F.3d 1339, 1343, 48 USPQ2d 1635, 1637 (Fed. Cir.

1998). The showing must also be specific. *See, e.g., In re Kotzab*, 217 F.3d 1365, 1371, 55 USPQ2d 1313, 1317(Fed. Cir. 2000) (“particular findings must be made as to the reason the skilled artisan, with no knowledge of the claimed invention, would have selected these components for combination in the manner claimed”); *In re Rouffet*, 149 F.3d 1350, 1359, 47 USPQ2d 1453, 1459(Fed. Cir. 1998) (the USPTO must identify specifically the principle, known to one of ordinary skill, that suggests the claimed invention). The examiner has failed to produce any objective evidence that the claimed locking mechanism is obvious in view of Smith. Therefore, we request that the examiner’s findings of obviousness in view of Smith not be repeated.

If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned by telephone prior to issuing a subsequent action.

The Commissioner is hereby authorized to charge any additional fees required or credit any overpayment, to Deposit Account No. 21-0765.

Respectfully submitted,



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